

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION

United States of America

)

Cr. No. 3:05-0946-MBS

)

v.

)

)

Joseph Cecil Gainey,  
a/k/a "Tear Drop,"

)

**OPINION AND ORDER**

)

)

Defendant.

)

)

This matter is before the court on Defendant Joseph Cecil Gainey's motions to correct sentence under 28 U.S.C. § 2255, which motions were filed on March 21, 2016 and May 17, 2016. Defendant argues that in light of the Supreme Court's holdings in Johnson v. United States, 135 S. Ct. 2551 (2015), and Welch v. United States, 136 S. Ct. 1257 (2016), he no longer qualifies as an armed career offender and his sentence should be vacated. On June 6, 2016, the government filed a response agreeing that Defendant should be resentenced without the armed career criminal enhancement.

The court **grants** Defendant's motions for relief under 28 U.S.C. § 2255. ECF Nos. 72, 73. The judgment order in the within action entered June 20, 2006, is **vacated**, and this matter is set for resentencing on Monday, June 27, 2016. A notice of hearing will be issued separately.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour

\_\_\_\_\_  
Senior United States District Judge

Columbia, South Carolina

June 8, 2016